

PLM-17

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,526

FILE: B-193903

DATE: June 19, 1979

MATTER OF: Kenneth A. Wendland

DIGEST: Employee of U.S. Secret Service was transferred from Stonewall, Texas, to San Antonio, Texas. While stationed at Stonewall he lived 60 miles away due to a lack of housing at or near there. Incident to the transfer to San Antonio the claimant incurred temporary quarters expenses. Claimant is not entitled to payment of TQSE since the distance between his new official station and old residence is not more than 40 miles greater than the distance between his old residence and his old official station. Para. 2-5.2h of the FTR. This mileage limitation has the force and effect of law and may not be waived in any individual case.

The issue is whether Special Agent Kenneth A. Wendland, U.S. Secret Service, is entitled to payment of subsistence while occupying temporary quarters (TQSE) incident to his permanent change of station from Stonewall, Texas, to San Antonio, Texas. For the following reasons Mr. Wendland's claim is denied.

The question was presented by letter of January 5, 1979, from Mr. Duncan Calcote, Authorized Certifying Officer, U.S. Secret Service.

The record indicates that prior to Mr. Wendland's transfer to San Antonio, Texas, he was assigned to the Johnson Protective Division at Stonewall, Texas. While stationed there he secured a private residence in Austin, Texas, 60 miles from Stonewall. The decision to live in Austin was not for the convenience or benefit of Mr. Wendland but was precipitated by a lack of housing in or near Stonewall.

At the time of his transfer to San Antonio Mr. Wendland was authorized TQSE. The Authorized Certifying Officer questions this in light of para. 2-5.2h of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973).

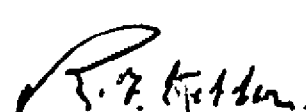
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Paragraph 2-5.2h of the FTR prohibits temporary quarters expenses for short distance transfers unless the distance between the new official station and the old residence is more than 40 miles greater than the distance between the old residence and the old official station. Using the above formula the difference between the distance from San Antonio to Austin (78 miles) and the distance between Austin and Stonewall (60 miles) is only 18 miles. Thus, the move made by Mr. Wendland does not satisfy the mileage limitation of para. 2-5.2h of the FTR.

Provisions for payment of relocation allowances are prescribed in 5 U.S.C. 5724a (1976). Executive Order 11609 of July 22, 1971, delegated to the Administrator of the General Services Administration the authority to promulgate regulations prescribing employee travel and relocation allowances. Those regulations are now set forth in Chapter 2 of the FTR. Thus, the mileage limitation imposed by para. 2-5.2h of the FTR has the force and effect of law, and, therefore may not be waived by any department of the Government in an individual case regardless of extenuating circumstances. 49 Comp. Gen. 145 (1969).

Since the 40-mile limitation of para. 2-5.2h of the FTR was not satisfied Mr. Wendland's claim for TQSE is denied. See: Matter of Eugene J. Noltkamper, B-186500, December 28, 1976. The fact that Mr. Wendland was authorized TQSE upon his transfer is not determinative of his entitlement. It is a well-established rule of law that the Government is neither bound nor estopped by the erroneous or unauthorized acts of its officers, agents, or employees, even though committed in the performance of their official duties. See: 56 Comp. Gen. 943, 950 (1977).

Accordingly, Mr. Wendland's claim for payment of subsistence while occupying temporary quarters is denied.


Deputy Comptroller General
of the United States